

Borough of Pendle Core Strategy

Advisory visit: 1 July 2014

Inspector: Ron Punshon

Matters discussed

Court judgements

The Inspector explained that there had been a number of recent Court judgements which had clarified issues surrounding the preparation of DPDs including the issue of early reviews, objectively assessed need for housing (OAN), the handling of Sustainability Appraisals (SAs), etc. It is important that both Councils and Inspectors should keep abreast of these judgements in order to avoid legal challenges to the adoption of the Plan.

The Council confirmed that it had comprehensively appraised the Plan against the procedural and policy requirements of the NPPF and was satisfied that its processes and Plan provisions accorded with the national guidance.

'Duty to co-operate'

The plan should be sound and legally compliant. It should also satisfy the 'duty to co-operate'. The Inspector stressed that the 'duty to co-operate' would be the first matter which the Examining Inspector would address. A failure to satisfy the 'duty to co-operate' CANNOT be remedied and any such failure in this regard would result in the Examination being halted at that point. The 'duty to co-operate' does not simply require consultation on Plan provisions. It requires that the Plan should have been PREPARED in co-operation with adjacent authorities and other bodies. In the event of a failure to satisfy the duty, the Council would need to go back into its processes to show that the Plan had been properly prepared through a co-operative process. This may be difficult to do if the Council has been unable to demonstrate that the duty had been satisfied in the first instance.

It is therefore vital that the Council can confidently demonstrate that the 'duty to co-operate' has been satisfied at the beginning of the Examination. The production of an up-to-date Joint SHMA (with Burnley) is a helpful starting point as it defines the Housing Market Area (HMA) and provides an up-to-date OAN for housing. Pennine Lancashire Spatial Guide 2011 also appears to be useful evidence of co-operative working although its significance appears to be down-played in the Council's documents.

The Council is satisfied that a wide range of co-operative processes are in place which will convince the Examining Inspector that the duty has been satisfied. The Inspector advised that these should be clearly set out and that evidence of meaningful co-operation (including agendas, minutes, outcomes, etc) should be included. Where there is an agreed position that there are no strategic issues which need to be addressed between the

Council, its neighbours or other bodies it would be helpful if these bodies could confirm this in writing to the Examination.

In respect of housing provision, while the Council is satisfied that its own needs can be addressed within the district boundaries, Burnley is much further behind in the plan-making process and its housing strategy is not yet finalised. The Council should be able to show that there is on-going co-operation with Burnley and it may be that the Plan should contain a commitment to undertake a review if the Burnley strategy would require changes to the Pendle approach.

However, the 'duty to co-operate' is not a duty to reach agreement. The Council needs to show that it has made every effort to reach a co-operative solution. If agreement has not been reached the Council will need to explain what factors have prevented agreement.

Sustainability Appraisal

Sustainability Appraisal (SA) is key to explaining why the Council chose to adopt its strategy. The Council's SA has been independently verified as being acceptable.

Housing Issues.

The Joint SHMA identified a range of needs. However, recent ONS projections indicated a much reduced growth in population which in turn indicated a much lower need for housing. The Council is in the process of reviewing the housing figures in the light of this. The Council is aware that the ONS figures carry a 'government health warning' and at present would place greater reliance on its own SHMA. However, a lower annual requirement may be indicated by further work. The Council had a number of options:

it could wait until this work was completed and, if a robust case for change is identified, it could consult on a change to the Plan and proceed to Examination on that basis.

it could submit the Plan with the original housing requirement and, when the results of the additional work are known, promote a reduced figure as a Main Modification to the Plan. The Main Modification could be published ahead of the Examination with a note to make clear that the Council would be promoting the Main Modification at the Examination. In this case it would be necessary to formally consult on the proposed change as part of any post-Hearings Main Modifications consultation process. Most Examinations involve a consultation exercise at this stage.

it could decide that the additional work did not justify a change to the housing requirement.

Given the importance of the housing requirement to the overall strategy of any Plan, the Inspector, on reflection, considers that, if a change is to be made, the first option set out above would be the simplest course.

The Council has adopted an annual housing target which is near the bottom of the range set by the SHMA. However, the Council explained at some length the difficulties of encouraging housing developments in the borough in the current housing market. Despite there being 'good' greenfield sites available, the area was unattractive to developers. In setting the housing requirement and, therefore, the 5 year housing land supply the Council considers that it must be realistic. To set the annual target at around 300 (as identified by the SHMA) when, despite the availability of sites, current annual building rates were less than 100 would be unrealistic. The building rate will take time to recover and new sites in desirable locations will take some time to progress through the planning system. The Council therefore proposes to set a 5 year housing land supply figure which reflects these factors, starting from a low rate of delivery and increasing significantly to a peak beyond the initial 5 years of delivery. The Inspector was of the view that such a 5 year requirement would not be unacceptable in principle provided that there was clear and robust evidence to support this approach, that delivery should be seen very much as a minimum and that developable sites were readily available to bring forward if demand became evident. The Inspector considered that, if this approach was to be adopted, there was a need to include clear provisions in the Plan which committed the Council to regular reviews of its position on its 5 year supply of land to ensure that supply was fully meeting demand. This could involve proactively ensuring that allocated sites came forward in line with appropriate timetables.

The Plan identifies a strategic housing allocation on 'Safeguarded Land' to assist in meeting housing requirements which did not involve Green Belt land. However, the Council considered that, in order to provide the most sustainable locations for other new housing, it may have to allocate Green Belt sites in its Site Allocations Plan. The Inspector advised that the Core Strategy should make reference to the fact that whilst, at this stage, a review of Green Belt boundaries was unnecessary, some loss of Green Belt could occur if a full appraisal of sites showed that Green Belt sites were clearly the most sustainable. The Inspector stressed that this would not be a simple weighing of benefits and disbenefits. The Council would need to show 'exceptional circumstances' for promoting changes to the Green Belt. These could include sustainability issues and the urgent need to deliver the housing requirement. It should also be made clear that a full review of the Green Belt boundaries may be required in the next Plan round if targets are to be met in a sustainable manner.

Settlement hierarchy

The Inspector advised that, provided its decisions were based on robust, objective assessments of sustainability, the Council's classification of settlements appeared reasonable. The Council confirmed that it had the necessary evidence to support its position.

Employment

The Council is concerned to increase the economic base of Nelson/Colne to encourage housing development and to meet the demands of existing employers who are operating from inadequate premises.

The Plan shows a strategic employment allocation in the Green Belt. The Council has looked at a number of potential alternatives but the proximity of the chosen allocation to the strategic housing allocation and existing housing areas, access to highway infrastructure and the lack of prominence in the landscape indicates that this is the most sustainable location. Other potential locations are also in the Green Belt or are dependent on highway infrastructure where there is no prospect of early or mid-term provision. The Inspector agreed that the Council's reasons sounded robust but reminded the Council that it would need to show 'exceptional circumstances' to justify development in the Green Belt.

Infrastructure, viability and CIL

Viability of housing sites is a major concern. Even 'good' greenfield sites were difficult to develop because of market conditions particularly in Nelson. The Inspector was convinced that the Council was seeking to bring forward sites which would be attractive to developers and break the current cycle of housing market failure. The Council was considering a CIL regime but felt that current circumstances were so fragile that its introduction may be counter-productive. The Inspector agreed. Given the staff resources available to the Council he considered that a CIL proposal would be better left until later and that the current regime of negotiations on individual sites would be more flexible in delivering development.

Retail

The Inspector reminded the Council that the former sequential testing advice had been revoked and it may wish to consider introducing a series of tests as part of the Plan.

Renewable energy

Whilst the Council was seeking to be proactive in seeking to move towards zero-carbon development, the Inspector felt that the introduction of detailed requirements in policies which sought significant improvements was likely to deter developers by imposing additional costs.

In terms of 'green' power generation the Council proposed to have a policy which did not deter proposals from coming forward.

General Points

In the Inspector's view a number of the Plan policies are overly prescriptive and it appears that the Council may have sought to cover every eventuality in some cases. Encouraging and delivering development is clearly a major priority in this area and a plethora of detailed requirements which affect viability or inhibit freedom of design may prove counter-productive.

For instance:

Policy SDP2 – the policy effectively restricts housing allocations to land within settlement boundaries and prioritises previously-developed land. Given that the NPPF no longer requires the Council to give priority to previously-developed land, this may need re-consideration.

Policy SDP3 and 4 – are such tight controls on how much development goes where really necessary? Would it not be best to see which are the most sustainable sites available for allocation before deciding how much will go to specific locations.

Policies ENV2 to 7 – these are highly detailed policies which developers are likely to find inhibiting. The inspector suggested that the Council should seek to restrict the policies to essential matters.

Policy LIV3 – the policy is so detailed that it loses its meaning by referring to too wide a range. If the policy is needed at all it should be more focussed.

Monitoring

Given the difficult circumstances which the Plan is seeking to address, the Inspector was of the view that a robust monitoring and review regime was essential to ensure that the Plan was delivering what was intended and that the Council can react rapidly in the event of any failure to deliver.

Examinations in the local area

Cheshire East Hearings scheduled for w/c 15 and 22 September –
Inspector Steve Pratt

R Punshon

INSPECTOR